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decree is that the only court which could have reconsidered the evidence of the wife's misconduct prior to the granting of the original decree as bearing on her fitness at the time custody was first awarded was in effect denied the power to do so; and its repudiated judgment was accepted by the Washington court, in refusing to admit such evidence of prior misconduct.

PRINCIPAL AND AGENT—NEGOTIABLE INSTRUMENTS—BASIS OF RIGHTS OF INNOCENT THIRD PARTY.—The general manager of the branch office of a corporation drew a check to his own order and indorsed it to a personal creditor. The manager had authority to draw checks to his own order for his salary, but had overdrawn his account at the time. *Held*, the corporation could recover the amount of the check from the creditor. *Napoleon, etc., Co. v. Stix, etc., Co.* (Mo. 1920) 217 S. W. 323.

The relationship of the parties in cases like this presents the familiar problem of the agent whose authority depends upon an extrinsic fact peculiarly within his own knowledge. Missouri has followed the leading case which protects the third party relying on the agent's representation. *North River Bank v. Aymar* (N. Y. 1842) 3 Hill 262; *Edwards v. Thomas* (1877) 66 Mo. 468. Where the relationships turn about a negotiable instrument, the element of innocence demanded of the third party has led the courts, in protecting him, to do so by viewing him in the guise of a holder in due course. *Wilson v. Metropolitan Ry. Co.* (1890) 120 N. Y. 145, 24 N. E. 384 (usually cited for the opposite proposition); *Buckley v. Lincoln Trust Co.* (1911) 72 Misc. 218, 131 N. Y. Supp. 105 (doctrine qualified). As a result, similar protection has been afforded even by courts which deny the doctrine of the *Aymar* case when considering an agency problem in which no commercial paper is involved. *Fillebrown v. Hayward* (1906) 190 Mass. 472, 77 N. E. 45; *Doe v. Northwestern Coal, etc., Co.* (1896) 78 Fed. 62. The Missouri decisions present an equal although more uncommon contradiction protecting the third party when the negotiable instrument is not present, and not protecting him when it is. Since the principal case arose Missouri has provided by statute that one who takes a negotiable instrument under such circumstances is always protected unless he had actual notice of misappropriation. Missouri, Laws of 1917, p. 143.

SALES—APPROPRIATION—ASSENT OF BUYER.—The defendant contracted to buy future goods from the plaintiff on credit, delivery to be made in installments at the mill of a third party. The plaintiff delivered several installments at the mill as specified in the contract. The defendant, claiming that the goods were not of the standard called for, refused to receive them. The plaintiff continued to make deliveries of proper quality after notice of the buyer's rejection of the goods. The defendant later ordered the mill to ship him the goods. Upon the expiration of the term of credit the plaintiff brought suit for the price. *Held*, that the order to the mill to ship the goods was an acceptance as a matter of law. *Prager v. Scheff* (N. Y. Sup. Ct., App. Term, 1920) 62 N. Y. L. J. 1777.

As to the goods delivered at the mill by the plaintiff before notice that the defendant refused to receive them, title clearly passed to the defendant in accordance with the intention of the parties and an action for the price was consequently proper. *First Nat. Bank v. Reno* (1887) 73 Ia. 145, 34 N. W. 796; *Olcese v. Mobile Fruit Co.* (1904) 211 Ill.

539, 71 N. E. 1084; *cf.* Uniform Sales Act §§ 19 Rule 4—(1) & (2), 63 (1). The seller unconditionally delivered to a bailee for the buyer with the latter's previous assent. *Main v. Jarrett* (1907) 83 Ark. 427, 104 S. W. 163; *White v. Solomon* (1895) 164 Mass. 516, 42 N. E. 104. If the notice by the buyer to the seller amounted to a refusal to receive further shipments, then his assent to take title in the manner prescribed in the contract was withdrawn and the appropriate remedy of the seller was in *special assumpsit* for wrongful breach of contract. See Uniform Sales Act § 64. Where, as in the instant case, the goods were readily marketable, the result would, according to the weight of authority at common law, be the same as that reached under this section of the Act, which, however, is a departure from the old New York rule *Moody v. Brown* (1852) 34 Me. 107; *cf.* *Puritan Coke Co. v. Clark* (1903) 204 Pa. St. 556, 54 Atl. 350; *Bement v. Smith* (N. Y. 1836) 15 Wend. 493. But the seller, having consistently maintained his position, should be allowed his action for the price, since the shipping order was an act consonant only with ownership in the defendant and should therefore be construed as a waiver of his prior objections. *Wolf Co. v. Refrigerating Co.* (1911) 252 Ill. 491, 96 N. E. 1063; see *Williston, Sales*, 843, 845.

SALES—CONDITIONAL SALE OR MORTGAGE—SECTION 65 N. Y. PERSONAL PROPERTY LAW.—A sold B a motor truck and in a written contract reserved title in himself until the purchase price should be paid, and in the same instrument provided for the execution of a chattel mortgage back to A. Simultaneously with the execution of the contract, the mortgage was given. In an action by B to recover the price already paid, after A had retaken and sold the truck, *held*, the transaction being a conditional sale, and the resale violating sec. 65 of the Personal Property Law, B may recover. *Warren v. Lair* (N. Y. App. Div., 3rd Dept., 1919) 190 App. Div. 139.

In a contract of conditional sale, an express waiver of the statute is nugatory. *Crowe v. Liquid Carbonic Co.* (1913) 208 N. Y. 396, 102 N. E. 573. Nor is a waiver, though after default, valid if there is no consideration. *Adler v. Weis & Fisher Co.* (1916) 218 N. Y. 295, 112 N. E. 1049; *Cee Bee Cee Waist Co v. Birenstein* (1917) 164 N. Y. Supp. 703. But if after such default, the parties make a new agreement for consideration, the case is taken out of the statute. *Seeley v. Prentiss Tool & Supply Co.* (1913) 158 App. Div. 853, 144 N. Y. Supp. 48, *aff'd* 216 N. Y. 687, 110 N. E. 1049; *Breakstone v. Buffalo Foundry & Machine Co.* (1915) 167 App. Div. 62, 152 N. Y. Supp. 394; *Nyboe v. Jacob Doll & Sons* (1915) 167 App. Div. 225, 152 N. Y. Supp. 650; *Boschen v. Multicolor Sales Co.* (1917) 98 Misc. 637, 163 N. Y. Supp. 202. The statute was passed to protect vendees from the harsh and oppressive terms, which at common law might have been written into contracts of conditional sale, and has therefore received a liberal construction. If the facts of the instant case be taken to be a waiver, clearly such provisions were invalid. Where a purchase price mortgage is given *ab initio* the transaction does not fall under sec. 65. *Gaul v. Goldburg Furniture & Carpet Co.* (1914) 85 Misc. 426, 147 N. Y. Supp. 516; *McMails v. Michaels* (1914) 147 N. Y. Supp. 516; *Sheeley v. Holmes Music Co.* (1919) 179 N. Y. Supp. 202. The same result is reached where a contract of conditional sale provides for the execution of a purchase price mortgage, which is done in a subsequent transaction. *Nordone v. Austin Drainage Excavation Co.* (1918) 184 App. Div. 309, 171 N. Y. Supp. 725. Although there is no insuperable